

Mr Nick Evans

Date 24 January 2014

Email: nickjohnevas@hotmail.com

Your ref

Our ref CVIP/NAJ/AGFM/
SR682953/mb

Dear Mr Evans

**COMPLAINT RESPONSE – INVESTIGATION
11A PORTGOWER PLACE, EDINBURGH**

I write to provide a response to your complaint received by the Council on 16 November 2013. Your complaint has been investigated by Alan Moonie, Principal Planner in Planning and Building Standards. Alan Moonie has now completed his report and has passed his findings to me. I have considered those findings and accept them, and this letter is the formal response.

The due date for the complaint response was 22 January 2013. However, due to the number and complexity of some of the individual points raised in your complaint, the investigating officer was unable to complete the investigation within that timeframe. I regret that this response has not met the target. I note that the investigating officer was unable to meet you or a representative on your behalf, and the investigation relied on the individual statements made within your complaint.

The details of your complaint were that the planning report that assessed the merits of the proposed development, as contained in planning application 12/03567/FUL, contained a significant number of errors and omissions. The desired outcome of your complaint was that the report should be re-written and reconsidered by the Development Management Sub-Committee.

The investigation was carried out by a review of the complaint, a review of the information contained within the planning application for the development, and the report of handling, and discussions between the investigating officer, the planning officer involved in the preparation of the report of handling and the transport planners involved in providing the consultation response.

For ease of reference, each point raised in your complaint will be summarised, where possible, and addressed in the order set down in your complaint:

1. The report states that the maximum height of the stadium is 27.5 metres; the eaves height of the tenements on Comely Bank Road is 30.1 metres and the top of the ridge has a height of 33.15 metres; these heights are completely wrong.

Response

The report refers to these measurements, which are taken from the drawings submitted as part of the application. However, it fails to state that they refer to heights above ordnance datum (AOD), rather than heights measured from the ground levels on which the buildings will stand or, in the instance of the existing tenements, are already located. Although this gives a misleading representation of the buildings' heights on first assessment, an inspection of the drawings highlights that these figures are relative to AOD, with, for example, the pitch level being annotated at 15 metres (AOD). In the context of comparative heights, the report does convey the fact that the stadium is lower than the neighbouring tenements. Notwithstanding this, the report should have been explicit in stating that the heights related to AOD.

This complaint is partially upheld

2. The reports states that the application was screened under the Environmental Impact Assessment (EIA) regulations, and determined that an EIA was not required, as it concluded that the location of development was not in a densely populated area; Comely Bank/Stockbridge is very densely populated, comprising of mainly four story tenements.

Response

The Environmental Impact Appraisal Screening Opinion was completed and signed off by the case officer and the principal planner of the Development Management (Major Developments (East and Waterfront)) team in accordance with Regulation 5(1) of the Environmental Impact Assessment (Scotland) Regulations 2011. Section 3 of the screening opinion required the council to have regard to whether the development would be likely to have a significant effect on the environment, taking into account, amongst other things, the location of the development. A descriptor set out that the environmental sensitivity of geographical areas likely to be affected by development must be considered having regard to a number of individual elements. These included the absorption capacity of the natural environment, paying particular attention to a number of criteria, including densely populated areas. The relevant section of the opinion was annotated, stating that 'the site was already within an urban area; it is already in use as a sports/rugby ground facility'.

Although the surrounding area has elements of dense housing, the area to the north is open space. It was determined that the development would not have a significant effect on environmental sensitivity. The screening opinion made this clear with the annotation relating to the site already being in an urban area and in use as a sports/rugby ground facility. There is no evidence that the officers did not have regard to the site and its surroundings as part of the screening opinion process. The officers were entitled to conclude that an EIA was not required.

This complaint is not upheld

3. The report misadvised the committee in respect of the materials to be used for the canopy over the stand, as it made reference to a Glulam canopy. This refers to the structure supporting the canopy rather than the canopy itself.

Response

The description of the proposal that is set out in the report (2.1.1) makes reference to the stand having 'terraced seating with a Glulam canopy over. This comprises curved timber beams.' The report then sets out the materials, and specifies 'standing seam metal roofing in dark grey'. It is clear from the report that the canopy will be covered in metal roofing, and this is reinforced by the annotation of approved drawing 14, which clearly details this finishing. There is no evidence that the report misinformed the committee in respect of this issue.

This complaint is not upheld

4. The traffic assessment was not based on the application figure of 2500 seated spectators and 2500 standing, plus the occupants of the function suite, bar lounge and sponsor boxes (approximately 1200); the Transport Planner based his primary advice on the existing attendance plus a small increase.

Response

The Transport Planner had access to not only the data contained within the traffic assessment, but also data collated from similar events, such as traffic generation from football matches at both Heart of Midlothian and Hibernian home matches. The locations of these stadia are in other parts of the city that broadly mirror the urban and transport form of the application site. In addition, these matches normally generate considerably greater crowds than are predicted for the development. There is no evidence to suggest that the assessment made by the council was based on inadequate information, and the combination of data allowed the Transport Planner to provide a comprehensive consultation response.

This complaint is not upheld

5. The report's consideration was based on crowds for home matches of between 350 and 900, these being the applicant's figures, and did not consider the figures provided in representations, which were lower and more realistic. The use of the applicant's figures minimised the impact of the likely increase.

Response

The figures provided by the applicant in the supporting statement indicate that normal attendance at the home matches range from 350-800, with occasional events attracting up to 3000. Although evidence of ticket receipts was not submitted to corroborate this statement, there is no substantive evidence to suggest that these figures are incorrect, and little weight can be attached to the claim that the average attendance is actually lower.

This complaint is not upheld

6. The reports states that the development would provide a new rugby pitch, two mini rugby pitches, training pitches; the mini pitches and the training pitches are the same thing.

Response

Paragraph 2.1.3 of the report does, initially, list the mini rugby pitches and training pitches as two separate facilities. However, it goes on to refer to the lighting columns for the 'training/mini pitches', thereby indicating that this resource is one and the same thing. This is reinforced by the approved drawings which clearly set out the individual sporting areas. Notwithstanding the slight confusion that could be caused by the initial reference to the pitches, there are no planning controls that could be imposed that would restrict or define how these areas are to be used; other than the practical restrictions of the location of floodlighting columns, the changing of the layouts of pitches on grass does not constitute development.

This complaint is not upheld

7. The report states that the development would result in the loss of approximately 17% of the playing fields, whereas the development will take almost 30% of the site.

Response

The report to Committee states that 'There would be a loss of approximately 17% of the playing fields as a result of the new building proposed (taking account of the demolition of existing clubhouse buildings and stand).'

This was calculated using the table provided by the applicant on page 42 of the Design Statement. The building footprint proposed is 6207 sq metres, which is approximately 17% of the total site area. (The figure accounts for the footprint of the building only and does not include hard surfaces proposed).

It would appear that the data which you used in assessing the percentage of playing field loss and the data which the council used is different. It is acknowledged that the area taken up by hard surfaces could indeed bring the overall figure of playing field loss closer to 30%. However, the report does make it clear that the figure relates to buildings only, and so there is no evidence that the report is misleading in this regard.

This complaint is not upheld

8. The report failed to say that in applying the sequential test in relation to retail, the initial question is that of need; no such need has been established.

Response

Scottish Planning Policy sets out the framework in which the sequential tests in relation to retail are carried out. The Edinburgh City Local Plan is informed by national policy, and the report makes considerable reference to policy Ret2 of the development plan. As the site is situated in an 'edge of centre' location, the requirement to consider alternative locations under the sequential test was undertaken. In summary, the report stated that the proposal met the requirements of Policy Ret2. Although the complaint argues that the question of need must be addressed prior to a sequential assessment, there is no policy basis for this statement.

This complaint is not upheld

9. The report failed to consider the materiality of the new local development plan. The issues report states that there is no intention to make any significant changes to the network of centres or their boundaries.

Response

The adopted local plan for the site is the Edinburgh City Local Plan (ECLP). The draft local development plan is at the proposed plan stage, and the primary consideration in policy terms remains the ECLP. There was no requirement for an assessment of the proposal against the draft plan, and the merits of the development were capable of being considered in full against the relevant policies included within the adopted local plan.

This complaint is not upheld

10. The report failed to consider the impact on residential amenity of the combined capacity of the function suite, bar/lounge and sponsors boxes when hosting events, conferences and functions. It is estimated that these facilities could introduce an additional 1200 people.

Response

A noise impact assessment was included in the application, and this assessed the worst case scenario in terms of noise issues. The report does make reference to potential noise issues from the proposed function suites, and concludes that noise from plant and machinery could be controlled by way of conditions. A condition relating to NR25 levels was imposed on the permission, along with a condition requiring the development to be completed in accordance with details submitted as part of the noise impact assessment.

The report also makes it clear that the main area of concern from noise is from crowd noise, and stated clearly and openly that there was little that could be done to mitigate that source of noise. It also states that the use as a rugby ground was historic, with no planning restrictions, and had hosted large events in the past.

There is no evidence to suggest that the report failed to properly consider the impact on residential amenity of the combined capacity of the function suite, bar/lounge and sponsors boxes.

This complaint is not upheld

11. The report was selective in its reporting of Halcrow's review of the methodology used by City of Edinburgh Council (CEC) officials in assessing the traffic impact of the development. The report failed to advise councillors that Halcrow's conclusion seriously questioned the CEC approach and of the responses provided to Halcrow in respect to the questions it posed.

Response

The report set out the broad position in relation to the impact of traffic generated by the development. There is no requirement for a report of handling assessment to include every detail that is submitted as part of a consultation or representation. As detailed in a response to a previous

point, the council had access to data that allowed a comprehensive assessment to be made, with recommendations being made in the consultation response on the basis of that information.

This complaint is not upheld

12. The report stated that Halcrows advised that 'if the traffic flow impacts were deemed to be low, there was not a need for a full transport assessment'. In fact, Halcrow actually advised that 'if CEC agree that there is to be no increase in traffic flows as a result of the development, then a transport statement would be acceptable.' As the CEC recognised that there would be an increase, the report misrepresented Halcrow's assessment.

Response

Although the wording used in the report is slightly different from the response received from Halcrow, read in context, it is clear that the assessment provides a balanced judgement of the impact of the development on transport. A summary of the report by Halcrow concludes that it would be difficult to determine, without a doubt, that there would be no increase in traffic flows as a result of the proposed development, but ends by stating that it is remained within the discretion of the planning authority to determine if sufficient information was available to properly determine the application.

This complaint is not upheld

13. The tone of Halcrow's report was incredulous that CEC believed that the scale of development would not lead to any increase in traffic.

Response

There is no evidence of incredulity in the report, and the summary sets out Halcrow's comments in a businesslike manner. As set out above, it noted that it was at the planning authority's discretion to determine if the submission met the agreed scope or if any additional information was required.

This complaint is not upheld

14. The report's assessment of the impact of the uses is undermined, as the permission has provided such a degree of unrestricted flexibility to the uses approved. The implemented mixture of these uses could have very different consequences.

Response

The report sets out the provision or extent of uses proposed, and these are restricted to classes 1, 2, 3 and 4 of the Town and Country Planning (Use Classes) (Scotland) Order 1997. Your complaint in point 14 is not explicit in setting out the different consequences that a variety of uses could have. However, although the uses have not been restricted to control the numbers of each class, all of the uses are commonly found in town centres and edge of centre locations. There is no evidence to suggest that the assessment has been undermined by the lack of restrictions within the nine individual units.

This complaint is not upheld

15. CEC Environmental Assessment recommended a condition to limit permitted development rights to change from class four to class six to ensure that the amenity of surrounding properties was protected from noise and vibration. No such condition was attached.

Response

The consultation response from Environmental Assessment makes reference to the ability to change a class four use to a class six use (subject to restrictions in the floor space of the unit) under permitted development rights. It goes on to state that there is the possibility of noise and vibration issues affecting neighbouring residential amenity should a change of use to class six occur.

Although planning conditions can be useful tools in securing development that would otherwise be unacceptable, government advice advises that they should not be used to cover every eventuality.

In the event of disturbance being caused by way of noise and vibration, other statutory regimes are available to control such issues.

The imposition of planning conditions lies solely within the remit of the planning authority, and whilst statutory consultees can make meaningful contributions to the planning application process, the responsibility in determining whether a condition meets the six tests of Circular 4/1999 (The Use of Conditions in Planning Permissions) falls to the planning authority. The report acknowledges that the development will have an impact on residential amenity, but concludes that appropriately worded conditions can control certain elements of the development.

There is no evidence to suggest that the report fails to take cognisance of comments and recommendations from statutory consultees.

This complaint is not upheld

16. The report argued that because the existing ground had no limit on its capacity, the proposed capacity of the new stadium was not material. The development would result in an intensification of the use, and so this issue was a material consideration.

Response

The aspect of your complaint in point 16 is restricted to the use of the ground only, and does not relate to the other elements, such as the new uses, which are examined in the report in detail. The intensification of a use may constitute a material change of use, but only in circumstances where the intensification is so great as to affect the definable character of the land and of its use. The report makes reference to a number of occasions when the ground has played host to events that have attracted a large number of spectators. The use of the ground and new stadium for events which would attract larger crowds would not constitute a material change of use of the land, as the character of the land and the use would not have changed. The report clearly states that there are no controls that can be imposed on spectator numbers. The Planning Service was entitled to reach the opinion that the proposed capacity of the new stadium was not material.

This complaint is not upheld

17. The report did not consider the impact on residential amenity of the hours of construction, the hours of use of the stadium, the public address system, vehicle reversing alarms and the non-sporting use of the stadium. The report failed to recommend conditions to control these issues.

Response

The planning permission could not seek to control the hours of construction or vehicle reversing alarms. An attempt to do so would be ultra vires. The hours of use could not be controlled given its lawful status. The noise from the loud speaker system can be controlled through other legislation, and there could be no requirement for the operators not to use any existing, uncontrolled system. With regards to the non-sporting use of the stadium, the development, including that part of it, was fully assessed, and indeed, the report is explicit in stating that the development will have an impact on neighbouring residential properties in terms of, amongst other things, noise and smell. Restrictions have been imposed on the elements that the Planning Authority considers capable of being controlled by conditions that meet the six tests of Circular 4/1999 (The Use of Conditions in Planning Permissions).

This complaint is not upheld

18. The application included a class four use as an office, for research and development and for any industrial purpose. The application was not assessed against local plan policy EMP1 office development. The lack of conditions to control the use classes made this important.

Response

The Planning Authority was entitled to grant permission for the development proposed. Circular 4/1998 states that conditions can be used to allow a development to be granted planning permission that would otherwise be refused.

There is no evidence to suggest that a condition restricting the uses would have an impact on office development within the area, and the imposition of such a condition would not have met the six tests of the circular.

This complaint is not upheld

19. The report's analysis of the representations did not say that because the applicant was the Edinburgh Academical Club, representations from club members should have been treated as letters from the applicant. This biased the report.

Response

Representations from individuals, whether in support, neutral or objecting to a proposal, are required to be treated as such. Regardless of membership of the Edinburgh Academicals club or any other club, individuals' representations cannot be treated as correspondence from the applicant. This allegation did not bias the report, and these representations were treated correctly.

This complaint is not upheld

As you can see, I have not fully upheld any of your complaints, although I acknowledge that the issue raised in point 1 (the height of the development) could have been expressed in a clearer manner within the report. However, the investigating officer found that when read in context, the data did not mislead the committee. As such, your desired outcome has not been achieved. Whilst I appreciate you will be disappointed, the investigation has been comprehensive.

This letter states the Council's final position on your complaint. If you remain dissatisfied you have the right to ask the Scottish Public Services Ombudsman (SPSO) to consider your complaint. You should do this within a year of when the issue occurred. The SPSO can be contacted at:

Write: SPSO, 4 Melville Street, Edinburgh EH3 7NS
Telephone: 0800 377 7330
Email: ask@spsso.org.uk
Web: www.spsso.org.uk

If you require further information or assistance please contact Alan Moonie on 0131 529 3909 or at alan.moonie@edinburgh.gov.uk . You can find more information on the Council's complaint process at www.edinburgh.gov.uk/complaints.

Yours sincerely

David R Leslie
Acting Head of Planning & Building Standards